United Nations A/INF/61/6

General Assembly

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Sixty-first session

United Nations Administrative Tribunal

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, for their information, the annual note by the United Nations Administrative Tribunal to the President of the General Assembly.

06-68382 (E) 170107

Annual note by the United Nations Administrative Tribunal to the President of the General Assembly

1. At its third plenary session, held in Paris on 20 December 1951, the Administrative Tribunal decided to submit a note each year to the President of the General Assembly. In accordance with that decision, the present note is submitted in respect of the year 2006.

A. Appointment of members of the Tribunal by the General Assembly

2. At its 64th plenary meeting, on 4 December 2006, the General Assembly, on the recommendation of the Fifth Committee (see A/61/564), reappointed Jacqueline R. Scott and appointed Bob Hepple as members of the United Nations Administrative Tribunal for a four-year term of office beginning on 1 January 2007.

B. Composition of the Tribunal during 2006

3. In 2006, the Tribunal was composed of the following members:

Spyridon Flogaitis (*President*)
Jacqueline R. Scott (*First Vice-President*)
Dayendra Sena Wijewardane (*Second Vice-President*)
Julio Barboza
Kevin Haugh
Brigitte Stern
Goh Joon Seng

C. Fifty-seventh plenary session

4. The Tribunal met in annual plenary session in New York on 21 November 2006, pursuant to article 5, paragraph 1, of its rules. All members were present.

D. Judgements delivered during 2006

5. In 2006, the Tribunal held two sessions, one in Geneva from 26 June to 28 July and one in New York from 23 October to 22 November. The composition of the panels and the corresponding judgements rendered are as follows:

Case No. 1258
Lacoste
New York, 28 October-17 November 2005
Geneva, 27 June-28 July 2006
Mr. Flogaitis, President
Mr. Barboza
Ms. Stern

(Lacoste against the Secretary-General of the United Nations)
(Request by former ICTR staff member for interpretation and implementation of judgement No. 1159)
Judgement No. 1282

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Case No. 1287
Mbarushimana
Geneva, 27 June-28 July 2006
Mr. Flogaitis, President
Mr. Barboza
Ms. Stern

(Mbarushimana against the Secretary-General of the United Nations)
((a) Request by former United Nations staff member for interpretation and revision of Judgement No. 1192
(b) Request by respondent for revision of Judgement No. 1192)
Judgement No. 1283

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Case No. 1365
Chronopoulou
Geneva, 30 June-28 July 2006
Mr. Wijewardane, presiding
Mr. Haugh
Mr. Goh

(Chronopoulou against the Secretary-General of the United Nations)
(Request by former UNHCR staff member for rescission of decision to terminate her contract due to abolition of post)
Judgement No. 1284

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Case No. 1392
King-Akerele
Geneva, 5-28 July 2006
Mr. Flogaitis, President
Ms. Stern
Mr. Goh

(King-Akerele against the Secretary-General of the United Nations)
(Claim by UNDP staff member that she was denied proper performance evaluation which resulted in denial of full and fair consideration for promotion)
Judgement No. 1285

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Case No. 1367
Sirois
Geneva, 26 June-28 July 2006
Mr. Flogaitis, President
Mr. Barboza
Ms. Stern

(Sirois against the Secretary-General of the United Nations)
(Claims by former United Nations staff member regarding adverse material which had been placed in his Official Status file)
Judgement No. 1286

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Case No. 1369
Akoth
Geneva, 29 June-13 July 2006
Mr. Flogaitis, President
Ms. Scott
Mr. Haugh

(Akoth against the Secretary-General of the United Nations)
(Request by former UNEP staff member for rescission of decision not to renew her fixed-term appointment and claim for compensation for irregularities in a redeployment exercise which were the direct cause of her separation from service)
Judgement No. 1287

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Case No. 1370
Moraga
Geneva, 26 June-28 July 2006
Ms. Scott, presiding
Mr. Barboza
Mr. Goh

(Moraga against the Secretary-General of the United Nations)
(Request by United Nations staff member for rescission of decision not to promote him)
Judgement No. 1288

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Case No. 1371
Delor
Geneva, 3-28 July 2006
Mr. Flogaitis, President
Mr. Barboza
Ms. Stern

(Delor against the Secretary-General of the United Nations)
(Request by former UNHCR staff member for rescission of decision to summarily dismiss him)
Judgement No. 1289

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Case No. 1372
Kotecha
Geneva, 26 June-28 July 2006
Mr. Flogaitis, President
Mr. Wijewardane
Mr. Goh

(Kotecha against the Secretary-General of the United Nations)
(Claims by former UNOPS staff member for wrongful termination of contract; violation of due process; harassment; and, non-payment of entitlements)
Judgement No. 1290

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Case No. 1373
Manzur
Geneva, 26 June-28 July 2006
Ms. Scott, presiding
Mr. Barboza
Mr. Goh

(Manzur against the Secretary-General of the United Nations)
(Request by former ECLAC staff member for rescission of decision not to promote her)
Judgement No. 1291

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Case No. 1374
Chaudhry
Geneva, 30 June-28 July 2006
Ms. Scott, presiding
Mr. Barboza
Mr. Goh

(Chaudhry against the Secretary-General of the United Nations)
(Request by UNICEF staff member for rescission of decision to separate him from service due to abolition of post)
Judgement No. 1292

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Case No. 1375
Möller
Geneva, 26 June-28 July 2006
Ms. Scott, presiding
Mr. Haugh
Mr. Goh

(Möller against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of decision not to admit his spouse to the United Nations Staff Mutual Insurance Society against Sickness and Accident)
Judgement No. 1293

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Case No. 1376
Friend
Geneva, 4-28 July 2006
Mr. Wijewardane, presiding
Mr. Haugh
Mr. Goh

(Friend against the Secretary-General of the United Nations)
(Request by ITC staff member for removal of adverse material in her Official Status file)
Judgement No. 1294

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Case No. 1377
Diokhane
Geneva, 30 June-28 July 2006
Ms. Scott, presiding
Mr. Barboza
Mr. Goh

(Diokhane against the Secretary-General of the United Nations)
(Request by former UNDP staff member for rescission of decision requiring him to apply for his post at the expiration of his fixed-term contract)
Judgement No. 1295

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Case No. 1378
El-Ansary
Geneva, 4-28 July 2006
Mr. Flogaitis, President
Mr. Haugh
Ms. Stern

(El-Ansary against the Secretary-General of the United Nations)
(Claim by former United Nations staff member for compensation for non-promotion)
Judgement No. 1296

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Case No. 1379
Baker-Kelly
Geneva, 26 June-28 July 2006
Mr. Flogaitis, President
Mr. Wijewardane
Ms. Stern

(Baker-Kelly against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of decision not to renew her fixed-term contract and for insertion of material into her Official Status file)
Judgement No. 1297

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Case No. 1380
Orinda
Geneva, 4-28 July 2006
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Orinda against the Secretary-General of the United Nations)
(Request by former United Nations staff member for removal of adverse material from her Official Status file and related claim for compensation)
Judgement No. 1298

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Case No. 1381
Sawhney
Geneva, 26 June-28 July 2006
Ms. Scott, presiding
Mr. Wijewardane
Mr. Barboza

(Sawhney against the Secretary-General of the United Nations)
(Request by former UNFPA staff member for rescission of decision to separate him from service and claim to restore health insurance for himself and his spouse)
Judgement No. 1299

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Case No. 1383
Chammas
Geneva, 4-28 July 2006
Mr. Wijewardane, presiding
Mr. Haugh
Ms. Stern

(Chammas against the Secretary-General of the United Nations)
(Request by ESCWA staff member for rescission of decision to deny her request to change her nationality for United Nations purposes)
Judgement No. 1300

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Case No. 1385
Waiyaki
Geneva, 7-28 July 2006
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Waiyaki against the Secretary-General of the United Nations)
(Request by widow of former UNFP staff member for rescission of decision to maintain his separation from service as an agreed separation rather than adjusting it to separation on health grounds)
Judgement No. 1301

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Case No. 1386
Hammond
Geneva, 6-28 July 2006
Mr. Flogaitis, President
Mr. Haugh
Ms. Stern

(Hammond against the Secretary-General of the United Nations)
(Request by United Nations staff member for rescission of decision not to promote her)
Judgement No. 1302

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Case No. 1387
Okeke
Geneva, 6-28 July 2006
Mr. Flogaitis, President
Mr. Haugh
Ms. Stern

(Okeke against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of decision to refuse to consider him as an external candidate for a post in the Professional category while he encumbered a General Service post)
Judgement No. 1303

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Case No. 1388
Capt
Geneva, 6-28 July 2006
Mr. Flogaitis, President
Mr. Haugh
Ms. Stern

(Capt against the Secretary-General of the United Nations)
(Request by UNHCR staff member for rescission of decision not to promote her and related claims for compensation)
Judgement No. 1304

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Case No. 1389
Gittens
Geneva, 10-28 July 2006
Ms. Scott, presiding
Mr. Barboza
Mr. Goh

(Gittens against the Secretary-General of the United Nations)
(Request by UNFPA staff member for rescission of decision not to continue her assignment to an L-2 level post and ancillary claims relating to performance evaluation)
Judgement No. 1305

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Case No. 1390
Lopez
Geneva, 3-28 July 2006
Ms. Scott, presiding
Mr. Wijewardane
Mr. Haugh

(Lopez against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of decision not to renew his fixed-term contract)
Judgement No. 1306

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Case No. 1125
Meron
Case No. 1253
Meron
New York, 1-22 November 2006
Mr. Flogaitis, President
Mr. Haugh
Mr. Goh

(Meron against the Secretary-General of the United Nations)
(Request by former UNHCR staff member for execution of judgement No. 1197)
Judgement No. 1307

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Case No. 1368
Loriot
Geneva, 28 June 2006
New York, 7-22 November 2006
Mr. Flogaitis, President
Ms. Stern
Mr. Goh

(Loriot against the Secretary-General of the United Nations)
(Claim by former UNDP staff member for payment of salary and allowances for a period of disability under article 11.1 (b) (ii) of appendix D, and for reimbursement of transportation expenses incurred for medical treatment)
Judgement No. 1308

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Case No. 1464
Loriot
New York, 7-22 November 2006
Mr. Flogaitis, President
Ms. Stern
Mr. Goh

(Loriot against the Secretary-General of the United Nations)
(Claim by former UNDP staff member for compensation for loss of earning due to permanent partial disability under article 11.2 (d) of appendix D)
Judgement No. 1309

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Case No. 1384
Koné
Case No. 1399
Aithnard
Geneva, 7-12 July 2006
New York, 30 October-22 November 2006
Mr. Wijewardane, presiding
Mr. Haugh
Mr. Goh

(Koné and Aithnard against the Secretary-General of the United Nations)
(Requests by former UNICEF staff members for rescission of decision to separate them from service)
Judgement No. 1310

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Case No. 1366
Burbidge et al.
Geneva, 28 June-28 July 2006
New York, 30 October-22 November 2006
Mr. Wijewardane, presiding
Mr. Barboza
Ms. Stern

(Burbidge et al. against the Secretary-General of the United Nations)
(Request by United Nations staff members and former staff members to compute their pension benefits taking into account their entire period of service with the Organization, including service prior to 1984)
Judgement No. 1311

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Case No. 1401
Clarke
New York, 25 October-22 November 2006
Ms. Scott, presiding
Mr. Barboza
Mr. Goh

(Clarke against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of decision not to promote him)
Judgement No. 1312

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Case No. 1415
Jumet
New York, 7-22 November 2006
Ms. Scott, presiding
Mr. Barboza
Mr. Haugh

(Jumet against the Secretary-General of the United Nations)
(Request by United Nations staff member for rescission of decision of the Secretary-General to outpost her from his Executive Office)
Judgement No. 1313

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Case No. 1412
Hassan
New York, 23 October-22 November 2006
Mr. Flogaitis, President
Mr. Haugh
Mr. Goh

(Hassan against the Commissioner-General of UNRWA)
(Request by former UNRWA staff member for rescission of decision to take disciplinary action against him)
Judgement No. 1314

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Case No. 1414
Roz
New York, 8-22 November 2006
Ms. Scott, presiding
Mr. Wijewardane
Mr. Haugh

(Roz against the Secretary-General of the United Nations)
(Request by ITC staff member for rescission of decision not to promote him)
Judgement No. 1315

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Case No. 1413
Douaji
New York, 7-22 November 2006
Mr. Wijewardane, presiding
Ms. Stern
Mr. Goh

(Douaji against the Secretary-General of the United Nations)
(Claim by former United Nations staff member that the Secretary-General failed to accord her priority consideration for re-employment despite having accepted a recommendation to that effect from the JAB)
Judgement No. 1316

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E. Summary of cases that merit special attention

6. The Tribunal would like to draw the attention of the General Assembly to a number of judgements distributed in 2006 that it considers to be landmark decisions, expanding its jurisprudence; a short summary of each is set out below.

7. In judgement No. 1273, Aidenbaum, which was rendered on 23 November 2005 and distributed on 31 January 2006, the Tribunal was asked to determine whether the respondent had acted negligently in his handling of the applicant's case, which involved a number of medical emergencies while the applicant was on

mission detail in Asia. In particular, the Tribunal had to determine whether the applicant's supervisor had neglected his duties and responsibilities during three different time periods: the months before the applicant went on mission to Asia, when she was asked to work consistent overtime; the period while she was on mission in Asia, where she suffered three cardiac synopses; and the period immediately after she returned to New York, when she was discharged by her supervisor without any explanation. According to the Tribunal, nothing that occurred during the first period gave support to any legal argument. The second period, however, showed the supervisor in a very bad light. The Tribunal was of the view that he had grossly neglected his duties and responsibilities regarding the well-being and safety of the staff members entrusted to his care during a field mission, and that the applicant should be compensated for the damages arising from his negligence. The third and last period again revealed the insensitivity of her supervisor — and of most of the Organization — towards the applicant. She had been rapidly and unscrupulously replaced, an insult compounded by the Organization as it had merely assigned her to a position inferior to her former one. For this, the applicant also deserved to be compensated. The Tribunal thus concurred with the Joint Appeals Board finding that the Organization had acted negligently in its handling of the applicant's case and that her former supervisor had "displayed remarkable irresponsibility and insensitivity" towards her, and ordered compensation in the amount of two years' net base salary.

8. In judgement No. 1276, Gagnon, which was rendered on 23 November 2005 and distributed on 31 January 2006, the Tribunal considered the case of a number of applicants who claimed that they were entitled to consideration for conversion to permanent appointments, pursuant to General Assembly resolutions 51/226 and 53/221, as they were recruited after successfully passing a competitive language examination. The respondent countered that as the examinations were qualifying, rather than competitive, the staff members were not entitled to such consideration. The Tribunal had to determine whether the applicants had passed a competitive examination and whether the resolutions in question were applicable to them. It found in the affirmative for both questions. It noted that the Administration itself had called for competitive examinations in the case of each applicant and that the Tribunal need not enter into whether the particular examinations were actually conducted in a competitive manner. Accordingly, the Tribunal found that the applicants had successfully taken competitive examinations and were entitled to the application of the relevant provisions of the resolutions. It ordered the respondent to consider the applicants for conversion to permanent appointment and awarded each applicant US$ 7,000 as compensation for the denial of their right to such consideration.

9. In judgement No. 1302, Hammond, the Tribunal was presented with a case concerning a promotion exercise. The respondent argued that the applicant had failed to discharge her burden of proof on two claims that (a) her qualifications relating to the core requirements for the post were at least equal to those of the successful male candidate, and (b) his appointment violated the Organization's policy to strive for gender equality. The Tribunal, while recognizing that the onus of proof usually fell upon the party making the allegation, felt that that general proposition should be modified when an applicant was denied access to information needed to make his or her case. The Tribunal determined that, where the relevant information was in the hands of the Administration and not available to an applicant,

the onus of proof in certain matters should be viewed as neutral rather than as resting on the applicant; that the evidence and the available facts should be placed where possible before the body carrying out the review; and that the review body should decide for itself from the evidence if the process was fair and regular, without reference to which of the parties might be seen as carrying the onus of proof.

10. In judgement No. 1304, Capt, the major issue to be addressed by the Tribunal concerned quorum. More specifically, the question was whether the Appointments, Promotions and Postings Committee had breached its rules of procedure by not having the required quorum of six members physically present at the relevant meeting at which it had selected the successful candidate for a G-7 post for which the applicant had applied. The Tribunal found that, as the rules of procedure of the Committee did not contain any provision for attaining quorum through technological means, such as teleconferencing and videoconferencing, the physical presence of its members at meetings was required. However, as the decision had been reached through consensus, the Tribunal felt that, were it to order that the contested decision be rescinded and that the Committee meet again, the outcome would be exactly the same. In this regard, it made a distinction between substantive and non-material errors in decision-making and found that lack of observance of formalities and procedures, or **vice de forme**, is essentially different from other grounds for review of administrative action, as it should not necessarily lead to the illegality of the decision. It concluded that there was no evidence that the impugned decision was taken in disregard of the substantive rules of administrative law and that the fact that a formality was not observed was not, under the circumstances of the given case, crucial. Therefore, the Tribunal declined to order rescission of the decision because of procedural error.

11. In both Hammond and Capt, reference is made to an earlier case, Alves (judgement No. 1245 (2005)). In a statement attached to that judgement, the issue was raised whether the respondent, when ordered to produce certain documents, might do so on condition that the documents not be disclosed to the applicant. The drafters of the statement found the respondent's stipulation unacceptable. In their view, the respondent was entitled to express his preference that a document not be released to an applicant because of concerns with regard to confidentiality or because the document was classified; it was for the Tribunal, however, to decide whether or not to release such a document. In that regard, reference is made to article 17 of the rules of the Tribunal, under which the Tribunal may request the production of documents at any stage of the proceedings.